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In The

Supreme Court of the United States

October Term, 1934.

No. 678.

EMERSON F. MINNIE, *Petitioner,*

v.

PORT HURON TERMINAL COMPANY AND FIDELITY AND CASUALTY COMPANY OF NEW YORK, *Respondents.*

BRIEF FOR PORT HURON TERMINAL COMPANY AND FIDELITY AND CASUALTY COMPANY.

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SUBJECT INDEX.

	Page
Argument	4-8
A. Maritime employment	4
B. Employment in foreign commerce	7
Conclusion	9
Statement of facts	2
Statement of questions involved	3
A. Maritime employment	3
B. Employment in foreign commerce	3

Table of Cases Cited.

Atlantic Transport Company v. Imbrovek, 234 U. S. 52	4
Chlentis v. Luckenbach S. S. Company, 247 U. S. 372	4
Clyde S. S. Company v. Walker, 244 U. S. 265	4
Crowell v. Benson, 285 U. S. 22	4
Knickerbocker Ice Company v. Stewart, 253 U. S. 149	4
Peters v. Veasay, 251 U. S. 121	4
Smith & Son v. Taylor, 276 U. S. 179	4
Southern Pacific v. Jensen, 244 U. S. 205	4
Washington v. Dawson, 264 U. S. 219	4

Other Authorities Cited.

Michigan Workmen's Compensation Act, Sec. 8481, Michigan Compiled Laws 1929	7
U. S. Merchant Marine Act, Sec. 883	7
U. S. Merchant Marine Act, 883 proviso	7

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While petitioner filed a brief in support of his petition for writ of certiorari no brief has been filed on his behalf since the granting of said writ. In view of this we feel it is necessary to make a concise statement of the facts and questions involved.

STATEMENT OF FACTS.

(Figures in parentheses refer to pages of printed record, except as the context clearly indicates otherwise.)

Petitioner was employed by respondent, Port Huron Terminal Company, as a longshoreman to assist in the unloading of the Steamer Laurendoch (13, 14, 19, 21) which boat at the time of petitioner's injury was anchored at the dock of said respondent in the St. Clair River at Port Huron, Michigan (19).

The Laurendoch was a boat of Canadian registry and owned by the Patterson Steamship Company of Fort William, Ont. (19, 20, 21), from which point it had come to Port Huron loaded with a cargo of baled paper pulp (19, 20, 21).

Petitioner was assigned to work with the hatchmen on the boat in front of No. 6 hatch on the aft end of the boat (14, 20). On July 11, 1933, while he was signaling a hoist on the boat, a swinging cable on the boat bearing four bales of paper struck him in the back and knocked him from the boat to the dock (13, 15, 20). He sustained injuries as a result of being struck by that part of the cargo then being unloaded (26, 28). Petitioner filed claim for compensation under the Michigan Workmen's Compensation Act but the Supreme Court of Michigan held that inasmuch as his work was of a maritime nature and inasmuch as he was located on navigable waters at the time he was injured that he was not entitled to an award of compensation under the Michigan Workmen's Compensation Act.

STATEMENT OF QUESTIONS INVOLVED.

1. Was the petitioner injured while engaged in a maritime employment upon navigable waters?

2. Was the petitioner engaged in foreign commerce?

ARGUMENT.

1. Was the petitioner injured while engaged in maritime employment on navigable waters?

The undisputed facts clearly indicate that the petitioner *at the time he was injured* was working in a maritime employment on navigable waters and not on the dock. Petitioner was doing the work of a stevedore or longshoreman and, as this court has repeatedly held, such work is maritime in nature. Therefore, the liability in connection with an injury sustained while doing such work is subject to the jurisdiction of the Federal law and not subject to the jurisdiction of the Department of Labor and Industry of the State of Michigan.

Crowell v. Benson, 285 U. S. 22;
Smith & Son v. Taylor, 276 U. S. 179;
Washington v. Dawson, 264 U. S. 219;
Knickerbocker Ice Company v. Stewart, 253 U. S. 149;
Peters v. Veasay, 251 U. S. 121;
Chlentis v. Luckenbach S. S. Company, 247 U. S. 372;
Clyde S. S. Company v. Walker, 244 U. S. 265;
Southern Pacific v. Jensen, 244 U. S. 205;
Atlantic Transport Company v. Imbrovek, 234 U. S. 52.

We will not burden the court with any extended discussion of these decisions. There is no question from the facts in this case that the petitioner here entered into a contract to perform a maritime employment. The undisputed evidence shows that he was hired to assist in the unloading of the Laurendoch and that he was

working *on the boat.* From the standpoint of the contract the Federal jurisdiction in admiralty must control.

The petitioner was struck by a cable on the boat *while he was working on the boat* and from the standpoint of tort, the petitioner being situated upon navigable waters at the time, the Federal jurisdiction in admiralty must control.

The petitioner in his brief in support of his petition for writ of certiorari bases his argument upon the assumption that the injury and damages were entirely sustained upon the dock. The record in this case does not bear out such assumption.

"Q. While you were so working, did you suffer an injury?

A. Yes, sir.

Q. What was that injury?

A. Back injury.

Q. How did you get it?

A. I was struck on the back with four bales of paper swinging on a cable.

Q. Yes?

A. (Continuing): And it knocked me from the boat onto the dock (14, 15).

* * *

Q. Now, where were you standing—or working, rather?

A. Well, the boat has six hatches, and I was working on the—at the time I was injured I was working on the front end of No. 6 hatching. That would be on the aft end of the boat" (20).

The record does not disclose the effect upon the petitioner of the blow which he received while on the boat as distinguished from the effect upon the petitioner of striking the dock.

We respectfully submit that it is unnecessary to consider the effect upon the petitioner to determine the question of jurisdiction. Irrespective of the amount of the injury and damages sustained by the petitioner on the boat and on the dock it is our contention that from a legal standpoint the petitioner's *injury* must be held to have been sustained while he was on the boat. Therefore, to determine the question of jurisdiction, basing the determination upon the location of the petitioner when he was injured, it should be held that the Federal law must control as against the State law.

The fact that petitioner struck the dock instead of another part of the boat or the river cannot be used as a basis for determining the question of jurisdiction. Conversely, if an employee otherwise entitled to compensation under the Michigan Compensation Act had been so struck as to be precipitated from the dock or land on to a boat in the river, it could not be reasonably contended that that fact alone would take jurisdiction away from the State of Michigan and place the case within the admiralty jurisdiction. This court so held in the case of *Crowell v. Benson, supra.*

We respectfully submit that jurisdiction must be determined by the location of the petitioner at the exact time of the injury. Any other test, such as petitioner's location resulting from the injury, would lead to confusion, and [illegible] not the test laid down in the decisions of this court.

2. Was the plaintiff injured while engaged in foreign commerce?

The Michigan Workmen's Compensation Act provides (Section 8481, Michigan Compiled Laws of 1929):

> "The provisions of this act shall apply to employers and workmen engaged in intra-state commerce, and also to those engaged in interstate or foreign commerce, for whom a rule of liability or method of compensation has been or may be established by the Congress of the United States, only to the extent that their mutual connection with intra-state work may and shall be clearly separable and distinguishable from interstate or foreign commerce."

Whether or not the petitioner in this case was at other times engaged in intra-state commerce, it is clear that at the time this accident occurred the plaintiff was engaged in foreign commerce, and therefore the Michigan Workmen's Compensation Act has no application. The petitioner at the time of the accident was assisting in the unloading of a Canadian boat loaded with a cargo consigned to an American port. It is clear, therefore, that he was engaged in foreign commerce.

The United States Merchant Marine Act, Section 861 *et seq.* U. S. Code Ann., Section 883, provides:

> "No merchandise shall be transported by water, or by land and water, on penalty of forfeiture thereof, between ports in the United States, including districts, territories and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States."

Under the rule that a person will be presumed to have complied with the law, in the absence of any evidence to the contrary, there is no room for any inference that the Laurendoch, a Canadian boat, owned by a Canadian Company, the Patterson Steamship Company of Fort William, Canada, was carrying any domestic commerce between Port Huron and some other point within the United States because such carriage would have been in direct violation of the provisions of the Merchant Marine Act above quoted. The proviso added to Section 883 of the U. S. Code above referred to is not applicable because the Interstate Commerce Commission has no jurisdiction of rates over Canadian rail lines and their connecting water facilities unless the rate is applicable to a through route including a United States rail line and a Canadian rail line and the connecting water facilities. In this case the cargo was being unloaded from the Laurendoch into the terminal sheds (14) of the respondent, Port Huron Terminal Company, and was not being transported over any through route including Canadian and United States rail lines. There is no evidence in the record that any United States rail line was in any way connected with the transportation involved.

Therefore, the petitioner being engaged in foreign commerce at the time of the accident, the Michigan Department of Labor and Industry has no jurisdiction of the remedies in connection therewith, jurisdiction of matters of foreign or interstate commerce being committed exclusively to the Federal Government to the exclusion of the State Government.

CONCLUSION.

For the reasons above set forth we respectfully submit that the judgment of the Supreme Court of Michigan should be affirmed, with costs to respondents.

Respectfully submitted,

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